

Memorandum

TO: Vocational Rehabilitation Counselors
CC: Vocational Rehabilitation Specialists, Kris Peterson
FROM: Glenn Morton
DATE: March 1, 2004
SUBJECT: Meeting Announcement & Results of February 20, 2004 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, March 26, 2004 at 2:00 pm. The meeting will be held in the conference room at the court's office at 525 South 13th street in Lincoln. Please note that this is a change from the previous tentative plans to meet on March 19, 2004.

The following are the results of the discussions at the February 20, 2004 meeting.

1. Judge High and Glenn Morton have become increasingly concerned that vocational rehabilitation plans are being held up because of disputes between a counselor and court specialist as to what is or is not pertinent or reasonable information for the specialist to request in reviewing a plan. This cannot be allowed to continue and a way must be found to resolve these disputes outside the context of an individual case.

The specialists are operating under standing instructions from Judge High and Glenn that they are to use their professional judgment in deciding whether to approve or disapprove a plan, and that they are to ask for whatever information they feel is necessary in order to make an informed decision.

Rule 39,E,3 also provides that a counselor's certification may be denied, suspended, revoked or placed in a probationary status for deliberately withholding pertinent information. It is Judge High and Glenn's position that the decision as to what is pertinent information relating to the specialist's approval or disapproval of a plan rests with the specialist, rather than the counselor, and that it is not appropriate for a counselor to refuse to respond or make a response contingent on the specialist's justifying or explaining the reason for the request.

Therefore, in the future all counselors will be expected to respond promptly and appropriately to any request for additional information from a specialist in an individual case. Failure to do so may be considered a violation of Rule 39,E,3. If a counselor questions the purpose or reasonableness of a request the first step is for the counselor to promptly contact the specialist by telephone and discuss the matter informally. It is expected and required that any such conversation will be conducted in a professional and respectful manner by all parties.

If that conversation does not successfully resolve the question to the counselor's satisfaction he or she must nevertheless respond promptly and appropriately to the request by providing the

information requested. However, in addition to providing the information to the court's specialist, the counselor may also bring the issue to the attention of Kris Peterson or Glenn. They will then conduct a policy review of the matter and respond to the counselor. The nature of the review will necessarily vary, but in most cases will include an identification of the basis for the request, any policy or procedure underlying the request, and whether a change in policy or procedure should be considered. If a policy or procedure change should be considered this will be brought to the attention of the counselor/specialist group for further discussion. Of course, the counselor is also free to bring any issue to the attention of that group as well.

2. The court's policy regarding expediting a plan review is that this will be done only in unusual circumstances and only with a satisfactory justification from the counselor as to why this is necessary and appropriate, including why the plan could not be submitted earlier.

3. The following issues were identified for further research and discussion:

a. Under what circumstances can or should a plan be approved without a specific job goal? Should a plan be approved for "pre-vocational" (or "job readiness" or "getting them ready to get a job" or "leading toward employment") training without a specific job goal, and if so under what circumstances? Considerations include the following: (i) section 48-162.01(3) says the employee is entitled to such vocational rehabilitation services as may be reasonably necessary to restore him or her to suitable employment, (ii) Rule 44,B,3,e says that formal retraining shall be applicable to the specific vocational goal listed on the proposed plan and shall be appropriate and necessary to enable the employee to obtain employment in the proposed occupation, (iii) Rule 44,C says the plan shall list the specific vocational goal, (iv) current court policy is that a specific job goal is not required for ESL or GED plans, but is required for ABE.

b. What are the counselor's obligations if the employee disagrees with a plan the counselor believes to be appropriate or refuses to sign a plan? Considerations include the following: (i) the court's specialists have been suggesting that the plan should be submitted to the court with a brief explanation as to why the employee disagrees with the plan or has refused to sign it; but no action will be taken to implement the plan absent a court order, (ii) it has been suggested that the CRC ethical standards do not allow a CRC to develop or submit a plan contrary to the wishes of an employee, (iii) section 48-162.01(3) says the counselor shall evaluate the employee and if necessary develop a plan, and that it is a rebuttable presumption that any plan developed by the counselor and approved by a court specialist is an appropriate form of rehabilitation, (iv) Rule 44,C says that when the counselor determines that the employee is unable to return to suitable employment without vocational rehabilitation services, the counselor shall develop a plan and submit it directly to the court (v) the judges of the court have on occasion approved a plan contrary to the wishes of the employee, and have sometimes ordered a counselor to develop and/or implement such a plan.

c. Under what circumstances, if any, is it appropriate for a counselor to provide vocational rehabilitation services outside the context of an approved plan? If it is appropriate, what are the notice and reporting requirements? Considerations include the following: (i) Rule 36,B provides that all voluntary vocational rehabilitation plans must have prior approval of the court's vocational rehabilitation specialists, (ii) not all of the priorities listed in section 48-162.01(3) and

Rule 44,B,3 require a plan, or at least not in all cases.